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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

20 THE UNITED STATES OF AMERICA,) Case No.: 3:20-CR-00249-RS-LB
21 Plaintiff,) DEFENDANT'S RESPONSE TO
22 vs.) GOVERNMENT'S STATUS REPORT
23 ROWLAND MARCUS ANDRADE,) AND REQUEST FOR DISCOVERY
24 Defendant.) COMPLIANCE DATE

Defendant Marcus Andrade submits this Response to the Government's Status Report dated April 14, 2023. The ultimate purpose of the Status Report appears to be to make an unnoticed motion to allow more time for Jack Abramoff's attorney to prepare a privilege log of Mr.

DEFENDANT'S RESPONSE TO GOVERNMENT'S STATUS REPORT AND REQUEST
FOR DISCOVERY COMPLIANCE DATE

UNITED STATES v. ANDRADE, Case # 3:20-CR-00249-RS-LBx

1 Abramoff's communications with his brother Robert. *See* Status Report at 2:6-12 (explaining
 2 reasons why Mr. Lowell does not have the "ability to meet the Court's April 14, 2023, deadline
 3 for a privilege review" and asking that the court permit him "an additional reasonable amount of
 4 time" to do so).

5 One of the five issues addressed in the Court's April 7, 2022 Order ("Discovery Order")
 6 is the Robert Abramoff communications and other material that were removed from Jack
 7 Abramoff's phone. After full briefing and argument, the Court explained that the Robert
 8 Abramoff communications were material and should be produced, subject only to a privilege
 9 review. Tr. at 11:8-13. In its Discovery Order, the Court directed that "the government perhaps
 10 can mitigate its burden by asking Jack Abramoff to do a privilege review first," Discovery Order
 11 at 7:20, and added that "[i]f Mr. Abramoff asserts privilege, he must submit a privilege log," *id.*
 12 at 7:24-25, but also ordered that unless Mr. Abramoff declined to object to disclosure, then "the
 13 government's taint team must review the documents and produce any that are not privileged."
 14 Discovery Order at 10:21-23. *See also* Tr. 13:24-25 ("I'm going to say the taint team has to
 15 review it. You just can't get out of it."). The Discovery Order did not set a date for a privilege
 16 log or for the production of materials that are determined not to be privileged, but at the
 17 argument the Court directed that if Mr. Abramoff wanted to be heard on the privilege issue, "he
 18 can intervene within a week if he wants to . . ." Tr. at 12:24.¹ No such request has been made,
 19 and, in any event, the government's attempt to outsource entirely the privilege review to Mr.
 20 Abramoff – especially given that he has declined the Court's invitation to appear in the case -- is
 21 contrary to the Court's order.

22 The government's Status Report not only ignores the Discovery Order's instructions
 23 relating to the attorney-client privilege review of Robert Abramoff's communications, but also
 24 makes a new attempt to escape from the production the Court ordered – a "personal privilege
 25 over irrelevant materials." Status Report at 2:4. No such privilege exists. At best, the claimed
 26

27 ¹ The Government's Status Report offers reasons why Mr. Abramoff could not complete a privilege log by April 14,
 28 2023 (which the court did not ask him to do), but none of those reasons explain why he could not ask to intervene by
 April 14, which the court *did* ask him to do, at least if he wanted to assert a privilege.

1 privilege is an argument based on relevance -- an issue that has already been argued to the Court
2 for months, and on which the Court has already ruled.²

3 Whether or not the government gets input from Mr. Abramoff – who is, among other
4 things, an alleged co-schemer and a cooperating witness who has declined the invitation to
5 appear in this case -- Mr. Andrade respectfully requests that the Court set a date for production of
6 the complete image of Abramoff's phone, the non-privileged Robert Abramoff messages that
7 were removed from the image of Abramoff's phone, and a privilege log – as well as all of the
8 other discovery the Court ordered on April 7, 2023.

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10 Respectfully submitted
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13 DATED: April 17, 2023

KING & SPALDING LLP

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15 By: /s/ Michael J. Shepard
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25 ² Even if Abramoff had intervened, and even if there were such a thing as a personal privilege over irrelevant
26 materials, the breadth of the so-called privilege asserted in the letter from Mr. Abramoff's counsel is contrary to
27 what the Court has ruled and goes well beyond the "family photographs" mentioned in the Government's Status
Report. For example, it includes "texts on various apps between him and personal friends"—communications that
the court has already determined to be material and that may go to the core of Mr. Andrade's defense.